

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 21.04.140 OF CHAPTER 21.04 OF TITLE 21 (ENVIRONMENTAL CLEARANCE) OF THE SAN JOSE MUNICIPAL CODE TO REMOVE THE PHYSICAL MAILING REQUIREMENTS FOR STAFF REPORTS FOR APPEALED PROJECTS FROM CHAPTER 21.04**

**WHEREAS**, the California Environmental Quality Act (“CEQA”) requires government agencies to consider the environmental consequences of their actions before approving plans and policies or committing to a course of action on a project, and the City of San José (“City) adheres to the requirements of CEQA; and

**WHEREAS**, in March 2022, the City Auditor’s Office published a report evaluating the City’s environmental review process (“2022 Audit Recommendations”); and

**WHEREAS**, the audit report presented findings and included 12 recommendations to reduce environmental review timelines for private development projects; and

**WHEREAS**, in the Mayor’s March 2024 Budget Message, the Mayor stated the need to streamline the CEQA process for development projects in Downtown San José and directed the City Manager to pursue the best strategy to eliminate or reduce the need for technical reports and analyze the staff review process for efficiencies with the goal of reducing review times. This action was included in the 2024-2025 Adopted Operating Budget; and

**WHEREAS**, on August 14, 2024, the Rules and Open Government Committee directed staff to present additional information on CEQA streamlining to the Community and Economic Development Committee, including recommendations to further streamline the CEQA process for projects; and

**WHEREAS**, in response to the Mayor’s March 2024 Budget Message and direction from the August 14, 2024 Rules and Open Government Committee, and building upon the 2022 Audit Recommendations and feedback from internal reviewing parties and external stakeholders, Planning staff have revised the requirement to provide appeal hearing staff reports electronically instead of mailing physical copies to reduce staff time and cost to prepare and mail reports, resulting in a more efficient process toward appeal hearings; and

**WHEREAS**, prior to making its determination on the amendment to Section 21.04.140 of Chapter 21.40 of Title 21 of the San José Municipal Code, the Council reviewed and considered the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 77617), and addenda thereto, and the Environmental Impact Report for the Downtown Strategy 2040 (Resolution No. 78942) and addenda thereto; and

**WHEREAS**, the Council of the City of San José is the decision-making body for the proposed amendment to the San José Municipal Code;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 21.04.140 of Chapter 21.04 of Title 21 of the San José Municipal Code is amended to read as follows:

**21.04.140 Appeals - General**

- A. Any determination regarding the appropriate environmental clearance for a project made by the Director, Planning Commission or other non-elected decision-making body may be appealed to the City Council as set forth and described in this Section.
- B. Appeals of certifications of environmental impact reports shall follow and adhere to the procedures set forth in Chapter 21.07.
- C. Appeals of determinations on a negative declaration or a mitigated negative declaration shall follow and adhere to the provisions of Chapter 21.06.
- D. Appeals to City Council of environmental determinations that a project is not subject to CEQA, is exempt from CEQA under the provisions of CEQA or this Title, or should be approved in reliance on a previously certified Environmental Impact Report or adopted Negative Declaration shall follow and adhere to the provisions of this Section.
- E. Appeals of an environmental clearance determination allowed under this Section to the City Council shall proceed in accordance with and adhere to the following provisions and conditions:
  - 1. A person wishing to file a written appeal of a determination on environmental clearance with the Director under this Section shall file such appeal no later than 5:00 p.m. on the third (3<sup>rd</sup>) business day following the earliest to occur of the following events:
    - a. An action is taken on the environmental determination if that determination is made through or as a part of a public hearing; or

- b. An action is taken after a public hearing on the project by a decision-making body making a decision on the project, which decision relied upon the determination on environmental clearance at issue; or
    - c. Commencement of the project if the project is undertaken without any public hearing.
  2. The appeal shall be filed on a form prescribed by the Director. The appeal shall state with specificity the reasons that the environmental clearance determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA or this Title.
  3. No appeal shall be considered unless it is based upon issues that were raised previously either orally or in writing to a recommending body or a decision-making body at or prior to a public hearing whenever the underlying project is considered at a public hearing.
  4. The City Council shall conduct appeal hearings under this Chapter when the City is the lead agency.
  5. Upon receipt of a timely appeal under this Section, the Director shall schedule a hearing and transmit a hearing notice for the appeal hearing before the City Council utilizing the processes and timelines set forth in Section 21.07.050.
  6. The Director of Planning, Building, and Code Enforcement or Director's designemaker of the environmental decision being appealed shall prepare a report and recommendation on the appeal to the City Council

~~and such report shall be provided to the appellant, applicant, and adjacent property owner(s) in the same manner provided for hearing notices pursuant to provisions of Section 21.07.050.~~

7. The appeal hearing before the City Council under this Section shall be a hearing de novo.
8. The City Council may elect to hear an appeal of the environmental clearance determination with a public hearing on a related underlying project.
9. Upon the conclusion of the appeal hearing under this Section, the City Council may find that the environmental clearance determination conforms to the requirements of CEQA and this Title or that the environmental clearance determination does not conform to the requirements of CEQA or this Title.
10. If the City Council finds that the environmental clearance determination comports with CEQA and this Title, it shall uphold the environmental clearance determination and may then immediately take action upon the related project. If the City Council finds that the environmental clearance determination does not comport with CEQA and this Title, it may require the Director to re-examine and process such environmental clearance determination and shall not take any approval actions on the related project.
11. All decisions of the City Council under this Section shall be final.

PASSED FOR PUBLICATION of title this \_\_\_\_ day of \_\_\_\_\_, 2026, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

MATT MAHAN  
Mayor

ATTEST:

---

TONI J. TABER, MMC  
City Clerk